

Gina Harrison

Director, Regulatory Affairs
Pacific Telesis Group

Washington, D.C. 20004
202/462-1000

PACIFIC  TELESIS
Group-Washington

March 21, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: *RM-8181, Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "*Petition for Waiver*" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

STANDARD

MAR 21 1996

In the Matter of)
)
Petition for Declaratory Ruling by) RM-8181
the Inmate Calling Services)
Providers Task Force)

FILED
MAR 21 1996

PETITION FOR WAIVER

Pacific Bell and Nevada Bell (the "Pacific Companies"), pursuant to Section 1.3 of the Commission's Rules, hereby petition for a Waiver of the Order in the captioned matter, released February 20, 1996. In its ruling, the Commission determined that inmate-only payphones are Customer Premises Equipment ("CPE") and must be provided on an unbundled, unregulated basis. The Commission directed local exchange carriers ("LECs") to notify customers of the change, reclassify inmate-only pay telephone investment from a regulated to a nonregulated activity, establish appropriate Part 64 cost pools, and file revisions to their Cost Allocation Manuals.

Section 1.3 of the Commission's Rules allows the Commission to grant a Waiver "if good cause therefor is shown." Although the granting of a waiver is discretionary with the

Commission, rules should be waived when particular facts make strict compliance inconsistent with the public interest.¹

In light of recent legislation, compliance with the Order will not be in the public interest. The Telecommunications Act of 1996,² at Section 276(b)(1), requires the Commission to prescribe payphone regulations that, among other things, (1) establish a per-call compensation plan, (2) discontinue the intrastate and interstate carrier access charge payphone service elements, (3) prescribe non-structural safeguards, (4) provide Bell Operating Company payphone providers the right to negotiate with location providers regarding the carrier of interLATA traffic, unless the Commission finds it is not in the public interest, and (5) allow all payphone service providers to negotiate with location providers regarding carriers that transport intraLATA calls. Subsection (d) of Section 276 of the Act specifically includes “the provision of inmate telephone service in correctional institutions” within the definition of the term “payphone service.”

Thus, the Act requires the FCC, as part of the payphone rulemaking, to develop a comprehensive regulatory framework for inmate telephone service as well as other payphone service. Viewed in this light, the February 20, 1996, Order constitutes a piecemeal approach to what is intended under the Act to be a unified regulatory approach. Moreover, the Order is based upon a small and very dated record.³ The full record to be developed through the payphone rulemaking will bring new facts to light that could significantly alter the conclusions adopted in the Order.

¹In the Matter of US West Communications, Inc., Docket No. 90-623, 1995 WL 649591, DA 95-2297, at para. 34 (rel. Nov. 6, 1995) (granting waiver of CAM requirements). Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ Only 10 parties filed comments and only five filed replies in this matter. Moreover, the pleading cycle was closed for three years prior to the entry of the Order.

The Order requires LECs to file revisions to the CAMs on or about July 3, 1996, sixty days prior to the September 2, 1996, effective date of the reclassification required by the Order.⁴ Section 402(b)(2)(B) of the Act states in part that the Commission shall permit any common carrier "to file cost allocation manuals . . . annually, to the extent such carrier is required to file such manuals" (emphasis added). Requiring LECs to file revisions to their CAMs more frequently than on an annual basis is contrary to this provision. Therefore, the Order must be revised to conform to the Act's requirements regarding annual CAM filings.

For all the foregoing reasons, the Pacific Companies petition the Commission to waive compliance with the terms of the Order until the Commission has released final rules under the payphone rulemaking to be undertaken pursuant to the Act.

Respectfully submitted,

PACIFIC BELL
NEVADA BELL



LUCILLE M. MATES
SARAH RUBENSTEIN
POLLY BROPHY

140 New Montgomery Street, Room 1522A
San Francisco, California 94105

ALAN F. CIAMPORCERO

1275 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20004

Their Attorneys

⁴ Order at p.17., para. 35.